

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISELOTTIE E. EVANS and DEPARTMENT OF THE NAVY,
NAVAL MEDICAL COMMAND, Gulfport, Miss.

*Docket No. 96-823; Submitted on the Record;
Issued February 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she developed an emotional or physical condition in the performance of duty, causally related to factors of her federal employment.

On November 15, 1994 appellant, then a 56-year-old office automation clerk, filed a claim alleging that she developed illness and incapacitation due to stress in her employment. Appellant alleged that she was not adequately trained in her new job as an accounting technician, that she received constant criticism of her work, that she was being given secretarial duties where excellent English was required when she had been raised in Germany and had no formal training in English, that her within-grade increase was withheld, that she was charged with being absent without leave (AWOL) when she should have been in leave-without-pay (LWOP) status and that she was constantly being harassed and hounded by her supervisors.

In support of her claim, appellant submitted a September 19, 1994 form denying her within-grade increase because her work was not at an acceptable level of competence and a September 30, 1994 rating form which stated that she had received 60 additional hours of training but was not skilled in the use of a calculator, that she was not familiar with rudimentary accounting jargon and notations and did not learn them during the training period, that she could not correctly total a column of figures, that she continued to make numerous errors in processing accounting transactions despite repeated training, that she did not grasp the basic principles of accounting functions and process flow and that she did not possess and had not developed the skills necessary to perform the most rudimentary accounting transactions. The rating form noted that all of appellant's work had to be checked for completeness and accuracy, that her use of a large amount of sick leave during the rating period had had an adverse impact upon her learning the job and that due to her performance flaws her performance was minimally successful bordering on unsatisfactory. An additional rating form for the period noted that typographical errors occurred too frequently, that material packaged for meetings was not always uniform or

properly sequenced and that her absences had been extensive, comprising up to 40 percent of the time during the rating period.

Also submitted was a September 27, 1994 memorandum regarding appellant's request for LWOP status for a 30-day period, which noted that LWOP could only be approved with proper justification and advised that her physician's note did not contain sufficient information to justify her being absent for 30 days. Her request, however, was ultimately approved.

Coworkers submitted statements noting that appellant talked incessantly about her husband having an affair, that she was obsessed about it and spent a great deal of time trying to find out about it, that she and her husband had gotten into a fist fight over it, that she went to court for a divorce, that she constantly complained of stomach problems but still consumed alcohol, that during attempted training appellant was witnessed being very negative and belligerent toward her trainer, that appellant would not take notes during training and that appellant was usually on the telephone, reading the newspaper, or out of the area.

However, one coworker implied that appellant was deliberately not being trained, stating that the comptroller was trying to get rid of appellant because she was over 50 years of age.

In a January 31, 1995 statement, one of appellant's trainers noted that appellant constantly had stomach problems, that she could not keep her mind on the job because of her husband's extramarital affair, that she had marital and financial problems, that her mother-in-law was interfering, that she had a short attention span, that she received more training than anyone else already employed and that she had no real accounting background and could not comprehend what training she was given. The trainer noted that appellant constantly interrupted and discussed her personal problems, that she could not concentrate, that she wasted a lot of time talking about her husband's infidelity, that she spent many hours chasing around behind her husband, that any stress on appellant was brought about by herself, that she read the newspaper, talked on the telephone and went for smoke breaks, that she was given every consideration by her supervisor and that the trainer never heard anyone raise their voice to appellant, although she did hear appellant raise her voice to her and be rude. The trainer noted that appellant did not take notes when given instruction, that when procedures were written out for her, appellant filed them away and never reviewed them or referred to them, that appellant tried to blame everyone else for her problems and that multiple trainers tried to train appellant but appellant was rude, did not want to learn and did not even try. The trainer opined that appellant's personal life was the cause of her illness and that at work every possible consideration was given, but that appellant did nothing to earn her salary.

The acting supervisor of the accounting division noted that appellant was frequently ill from stomach problems, that appellant did not show an understanding of the accounting systems, that after explanation she still did not appear to grasp the concepts, that notes prepared to help appellant were not used, that documents were misfiled, that when corrected appellant was offended or aggravated, that appellant spoke often of her marital problems and that appellant's extensive personal problems were resulting in multiple phone calls at work.

A statement from the administrative officer noted that appellant's personal problems caused her to become physically ill, that after her transfer to accounting her personal problems

continued, that appellant's stress problems were caused by her own reaction to her personal problems and that appellant's illness was not due to job-related stress or working conditions but due to her personal life.

The comptroller stated, in a January 30, 1995 memorandum, that appellant talked extensively about the stress caused by her separation and divorce, that the written instructions provided to appellant were extremely comprehensive, that she had no knowledge of undue stress being placed on appellant, that appellant's supervisors went out of their way to accommodate her because of her personal problems and that appellant was extremely defensive about being asked to correct mistakes she had made on her work.

Other supervisors also provided statements noting that after appellant's transfer to the accounting division her personal life began to unravel, that she had difficulty learning her new job, that she frequently complained about her stomach condition, that her assigned work was very basic and routine, that she was not familiar with the duties she was required to perform and that she had difficulty learning new skills although adequate training and assistance were provided. Another supervisor noted that appellant had continual problems with her stomach, that a lot of appellant's problems were due to her marital problems, that when confronted with appellant's allegation that she had not been trained, they went back to the basics and that she spent at least 60 hours working with appellant explaining the aspects of the job. The supervisor noted that coworkers complained to her that they did not want to hear about appellant's marital problems and that one morning appellant called her after barricading herself in her bedroom, complaining that her husband had come home drunk and was knocking over things and wanting her to stay on the line until the police came. A training supervisor noted that she had provided a lot of assistance to appellant, on-the-job training and advice, but noted that appellant continued to complain that she was not being trained and further noted that, despite her assurances to appellant that she was available for one-on-one assistance, appellant never attended any of her monthly training sessions or asked for help. This supervisor noted that she never observed appellant being put under undue stress or being treated badly by anyone.

The director of the financial management division stated that the secretarial duties appellant was asked to perform upon her reassignment were routine, including copying and compiling materials for meetings, maintaining a calendar, distributing mail, filing and answering routine telephone calls and never included composing correspondence, correcting grammatical structure, or taking dictation. She noted that appellant was allowed sufficient time to acquire new skills needed for the job and was worked with one-on-one. The director noted that appellant had serious attendance problems, that she took an extended leave of absence for a cruise for her health, that supporting medical evidence for her LWOP stated that her problem was stress in her personal life, that an October 26, 1994 medical report stated that appellant was "upset over job" even though she had not been at work for more than 30 days and that the director was forced to communicate with appellant by mail or by phone, which appellant filed a grievance over stating that the director's attempts to communicate with her were harassment.

Another comptroller's statement noted that despite having put on her application that she was experienced in accounting and bookkeeping, appellant was deficient in her technical knowledge of even the most basic principles of accounting, that appellant's training did not go

well as appellant did not concentrate, made a poor effort to learn, was at times argumentative or stubborn when instructed and made no effort to take notes even when instructed to do so. She noted that appellant was distracted by personal problems, that she had attendance and performance problems, that she resisted learning, that 100 percent of appellant's work had to be reviewed and that even with 60 hours of additional training appellant's pattern was repeated with resistance to training, failure to take notes, excessive sick leave usage and preoccupation with her personal life. The comptroller noted that counseling was attempted, that appellant was given extra attention and training and that each position in which appellant worked was a low stress position. She stated that if appellant had a stress problem, it was due to outside factors. The comptroller also noted that the statement appellant submitted from a coworker alleging age discrimination was written by a disgruntled former employee of the department and should be disregarded in its entirety, as that employee had no direct knowledge of appellant's circumstances.

By letter dated March 24, 1995, the Office of Workers' Compensation Programs requested further information supporting appellant's allegations, including specifics of each instance alleged. However, no such evidence was forthcoming from appellant.

The employing establishment's commanding officer also provided a statement in which he noted that he did not concur with appellant's allegations that she was not trained in her job or that job stress caused her health problems. He noted that on appellant's application she alleged that she possessed journeyman-level accounting technician qualifications and that the position for which she was hired required such qualifications, but that in actuality appellant could not use a calculator, could not correctly total a column of figures, could not explain what she was doing or why, could not correctly use accounting terminology or notation and did not understand basic accounting principles. Although the position for which appellant was hired was not a trainee position, he noted that appellant received at least 60 hours of training, but after several months continued to make mistakes, could not seem to grasp the basic concepts in cost accounting, did not pay attention well, did not take notes even when instructed to do so and could not remember what she was told to do even though instructed in office procedures repeatedly. The commander noted that even after many hours of training, appellant made minimal progress in learning, seemed preoccupied by her marital difficulties, had excessive absences and did not learn her job at all. He noted that as an accommodation appellant was moved out of the accounting position that she could not perform and into a newly created position of office automation assistant, which was not secretarial in nature as appellant alleged, but which required answering telephones, filing, scheduling appointments, opening and routing mail, making copies and some typing. The commander noted that, at no time was appellant asked to draft correspondence, write or correct grammar. He noted that appellant had certified on her application that she was computer literate, could operate word processing software, could type and perform clerical duties, such that no substantial training should have been required, however, he indicated that appellant could not correctly complete travel orders, left information out, could not compare a final copy to the rough draft to check for mistakes, could not do simple proofreading and made frequent typographical errors. He noted that when corrected appellant became irritated and alleged that she did not get the proper training. The commander noted that appellant's allegation against Mr. B.L. Ramsey, a comptroller, that he used harsh language in her presence was unsubstantiated and uncharacteristic of Mr. Ramsey, particularly since it was he who had

originated the idea for appellant's accommodation as an office automation assistant in an attempt to salvage a deteriorating situation. The commander noted that appellant was never harshly criticized, ridiculed or harassed and that she did not get a step increase because her performance would not support it. He opined that appellant's claim was totally without foundation, that it had no basis in fact and that the jobs she was assigned were the easiest and least stressful in the command.

By decision dated July 31, 1995, the Office rejected appellant's claim finding that the evidence of record failed to establish that an injury occurred in the performance of duty as alleged. The Office found that appellant's alleged stressors were either noncompensable under the Act, or were unsubstantiated by the record as fact or as having occurred.

By letter dated August 22, 1995, appellant requested reconsideration and in support she submitted medical treatment records and bills for medical care. Appellant also submitted an affidavit declaring that she had no income, that her treating physician supported that her work at the employing establishment contributed greatly to her physical and emotional distress, that she failed to receive adequate training, that she was repeatedly aggravated by her supervisors and that she endured "slurs against [her] nationality of origin."

By decision dated September 21, 1995, the Office denied modification of the July 31, 1995 decision finding that the evidence submitted was insufficient to warrant modification. The Office noted that the work incidents alleged by appellant were either not considered to be compensable under the Federal Employees' Compensation Act or they were not substantiated and found that the newly submitted medical evidence did not prove that the claimed work incidents occurred as alleged.

The Board finds that appellant has failed to establish that she developed emotional or physical conditions in the performance of duty, causally related to factors of her employment.

To establish her claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

¹ See *Victor J. Woodhams*, 41 ECAB 345 (1989).

² *Id.*

Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his or her employment and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.³ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁴ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁵

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸

Several of appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,⁹ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.¹⁰ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Id.*

⁵ See *Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster* 38 ECAB 521 (1987).

⁶ See *Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

¹⁰ See *Richard J. Dube*, 42 ECAB 916 (1991).

generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: appellant receiving poor performance evaluations,¹¹ appellant not receiving a within grade increase, general criticism and initial disallowance of appellant's request for LWOP status for her cruise. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and therefore they are not compensable now under the Act.

Appellant did not allege that she developed an emotional condition arising out of her regular or specially assigned duties, or out of specific requirements imposed by her employment. She alleged, in part, that her condition was caused by supervisory harassment. The Board has held that actions of an employee's supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹² However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹³ The Board finds that appellant has failed to submit any specific, reliable, probative and substantial evidence in support of her allegations of harassment. Appellant has the burden of establishing a factual basis for her allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by multiple statements from appellant's supervisors and employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Appellant also repeatedly alleged that she had not been trained to perform her assigned tasks. If this allegation were supported by the evidence of record, any emotional illness arising from it could be compensable if supported by the medical evidence. However, the Board notes that the evidence of record reveals that multiple trainers and supervisors discussed and participated in appellant's receipt of over 60 hours of additional training in her duties, plus one-on-one attention, the offer of additional monthly training and help if requested and written instructions for reference regarding office procedures. Therefore, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Appellant alleged that she was required to perform secretarial tasks requiring a knowledge of English beyond her capability as a nonnative speaker. However, the Board notes that this allegation is not supported by the evidence of record, which specifically identifies appellant's required office automation assistant duties and indicates that she was not required to perform such English editorial tasks, but was asked only to format documents and to check final versions against earlier drafts. Therefore, this allegation cannot be considered to be a compensable factor of employment since a factual basis for it has not been established.

¹¹ See *Thomas D. McEuen*, *supra* note 9; 42 ECAB 783 (1991).

¹² *Sylvester Blaze*, 42 ECAB 654 (1991).

¹³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant alleged that she was the object of ridicule and of national origin slurs, however, she has submitted no substantiating evidence of incidents involving such alleged ridicule or national origin slurs. The Board notes, in fact, that the evidence of record supports that everyone tried to be very nice and helpful to appellant and that no one witnessed her being abused or insulted in any way. Consequently, this allegation is not established as being factual and therefore cannot be a compensable factor of employment.

Appellant alleged that she was afraid of making mistakes for which she would be reprimanded, however, the Board notes that the evidence of record does not support that appellant was ever reprimanded for her mistakes and in fact, that others took responsibility for her mistakes and only asked that she correct them. Therefore, the Board finds that this fear of being reprimanded is self-generated and is not supported by the record as arising out of her duties, such that it could constitute a compensable factor of employment.

Appellant did provide a statement from an ex-employee of the employing establishment which supported appellant's contentions that she was not properly trained, implied that it was deliberate and suggested that the reason was that appellant was being discriminated against because of her age. However, the Board notes that the employing establishment identified the writer of this statement as a disgruntled ex-employee who did not work directly with appellant or have accurate knowledge of her circumstances. Consequently, the Board finds that the probative value of this statement is minimal as it is not supported by the record.

As appellant has failed to establish any compensable factors of employment and implicate them in the development of her conditions, she has failed to prove that she sustained emotional or physical injuries in the performance of duty as alleged. Consequently, the medical evidence of record need not be addressed.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 21 and July 31, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 25, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member